

STATE OF NORTH CAROLINA OFFICE OF THE STATE CONTROLLER	REQUEST FOR PROPOSAL NO. 14-07-002	
	Bids will be publicly opened: February 28, 2007	
	Contract Type: Open Market	
<i>Refer <u>ALL</u> Inquiries to:</i> Dana Lyle Telephone No. 919-431-6746	Date Issued: February 12, 2007 Commodity Number: 924-16 Commodity: End User Training Services	
E-Mail: BEACON@ncosc.net	Using Agency Name: Office of the State Controller	
(See page 2 for delivery instructions.)	Agency Requisition No. PR 6624297	

OFFER AND ACCEPTANCE: This solicitation advertises the State's needs for the services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the services and/or goods described in this solicitation. All proposals and responses received shall be treated as offers to contract. The State's acceptance of any proposal will be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows: Other Requirements and Special Terms specific to this RFP, Specifications of this RFP, including any amendments, the State's General Terms and Conditions for Goods and Related Services, Best and Final Offers, if any and the awarded Vendor's proposal.

EXECUTION: In compliance with this Request for Proposal, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all services or goods upon which prices are bid, at the price(s) offered herein, within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion.

Failure to execute/sign bid prior to submittal shall render bid invalid.

VENDOR:		FEDERAL ID OR SOCIAL SECURITY NO.	
STREET ADDRESS:		P.O. BOX:	ZIP:
CITY & STATE & ZIP:		TELEPHONE NUMBER:	TOLL FREE TEL. NO
Will any work under this contract be performed outside the United States? Where will services be performed: _____		YES_____	NO_____
TYPE OR PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:	
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:	

Offer valid for ninety (90) days from date of bid opening.

ACCEPTANCE OF BID: If any or all parts of this bid are accepted, an authorized representative of the Office of State Controller (OSC) shall affix his or her signature hereto and this document and the documents in the order of precedence listed above shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

FOR OSC USE ONLY

Offer accepted and contract awarded this ____ day of _____, 2007, as indicated on attached certification,
by _____ (Authorized representative of OSC).

ISSUING AGENCY: Office of the State Controller
1410 Mail Service Center
Raleigh, North Carolina 27699-1410

USING AGENCY: Office of the State Controller
1410 Mail Service Center
Raleigh, North Carolina 27699-1410

DELIVERY INSTRUCTIONS: Deliver **two (2) signed originals and five (5) copies** of the Proposal to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front.

DELIVERED BY US POSTAL SERVICE	DELIVERED BY ANY OTHER MEANS
BID NUMBER: 14-07-002 Office of the State Controller Attn: John Morgan 1410 Mail Service Center Raleigh, NC 27699-1410	BID NUMBER: 14-07-002 Office of the State Controller Attn: John Morgan 3512 Bush Street Raleigh, NC 27609

Sealed bids, subject to the conditions made a part hereof, will be received at **3512 Bush Street, Raleigh, North Carolina** until **2:00 p.m. EST** on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Proposals for this RFP must be submitted in a sealed package with the Execution of Proposal signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed execution of proposal shall result in disqualification. All proposals must comply with Section III, Proposal Content and Desired Outcomes.

Proposals will not be accepted by electronic means. This RFP is available electronically at <http://www.ips.state.nc.us/ips/pubmain.asp>. All inquiries regarding the RFP requirements are to be addressed to the contact person listed on Page One.

All questions about this RFP must be in writing. Written questions concerning the RFP specifications will be received until Monday, February 19, 2007 at 2:00 PM. They must be sent via e-mail to: BEACON@ncosc.net. Please insert "14-07-002 Questions" in the subject matter of your e-mail. A summary of all questions and answers will be posted to the Interactive Purchasing System (IPS) as an addendum to this RFP.

Addendum to RFP: If written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <http://www.ips.state.nc.us/ips/deptbids.asp>, and shall become an Addendum to this RFP.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

If Addenda are required to be signed, they must be signed and submitted with the Vendor's response to the RFP.

Basis for Rejection. Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

NOTICE TO VENDORS: The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Vendor response. This applies to any language appearing in or attached to the document as part of the Vendor's response. By execution and delivery of this Request for Proposal and response(s), the Vendor agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect.

Late Proposals. Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

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Section I. Introduction and Overview

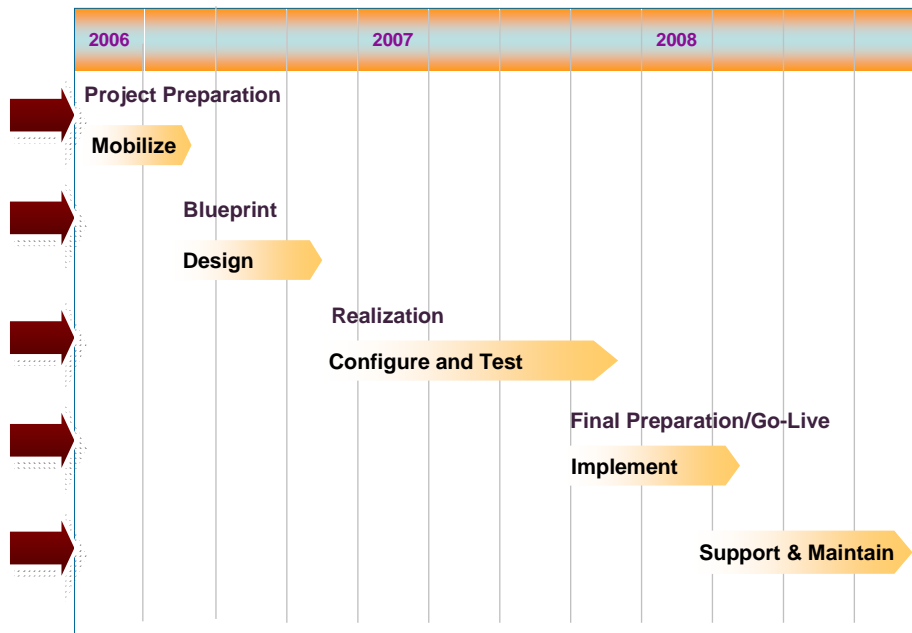
A. Procurement Purpose

The purpose of this RFP and any resulting contract award is to solicit proposals from qualified Vendors to assist the State of North Carolina in creating and deploying a learning program for the BEACON HR/Payroll Project. The BEACON program is a statewide collaborative effort to modernize and standardize key business processes through the implementation of SAP R/3 ERP 2005. For more information on BEACON, visit the program website at <http://www.BEACON.nc.gov>

B. Project Background

Session Law 2001-491 directed the Office of the State Controller (OSC) to determine the feasibility of developing and implementing a new business infrastructure for the State. In conjunction with the Office of State Personnel (OSP), Office of State Budget & Management (OSBM), Information Technology Services (ITS), and the Department of Transportation (DOT), OSC conducted a study of current state systems. The study concluded that continued use of the current business systems may adversely impact the fiscal integrity of state government, as well as the efficiency and effectiveness of its operations. Therefore, the State decided upon a replacement strategy that carefully weighs the risks of potential system failures with the current state budget condition and funding priorities.

The strategy involves an extended implementation approach of SAP R/3. The first focus of the implementation approach is to replace PMIS (HRIS system), Central Payroll, and DOT Payroll through the HR/Payroll Project. In 2005, the State completed requirements building for the new HR/Payroll system. The State is currently in the building stage of the project. The expectation is that the SAP system will significantly improve the efficiency of services through the standardization of HR, Payroll, and Benefits processes and information across the State. By establishing standardized processes, the State of North Carolina is seeking to provide its employees with consistent and reliable information regarding their personal HR, Payroll, and Benefits questions and needs. Additional information on the BEACON program can be found at: www.BEACON.nc.gov. The projected timeline is below:



C. HR/Payroll End User Training Summary

The learning program shall provide training and support materials for the full scope of the BEACON HR & Payroll Project. The full scope of the project consists of:

- Personnel Administration
- Benefits Administration
- Organizational Management
- Time Management
- Payroll
- Employee Self Service (ESS)
- Manager Self Service (MSS)
- Business Intelligence (BI) Reporting
- Basic Financial (FI) Structure and Chart of Accounts (Limited users)

The new system will support 32 agencies with employees distributed throughout the state. There will be two separate go-live dates: January 2008 and April 2008. The same functionality will be implemented in both groups. The purpose of having two go-live groups is to better control the implementation. The number of employees to be trained for each implementation date is shown below.

Functional Area	Group 1 January 2008	Group 2 April 2008
Core HR and Payroll End Users	1,381	760
ESS End Users	45,083	40,829
MSS End Users	4,500	4,100
BI Reporting End Users (Core users plus 300 management / executive users)	1,625	875

Training delivery will be centralized in four regional training centers, two located in Raleigh, one in the vicinity of Morganton, and one yet to be determined. It is the responsibility of the State to provide outfitted physical training facilities.

The learning strategy is to provide role-based training that includes instructions on completing SAP transactions, as well as, the associated business processes and policy changes. Based on current analysis, the curriculum will consist of at least 21 courses, for a minimum of 102 instruction hours. While most of the courses will be instructor-led, web-based versions of courses for SAP Basic Navigation, process overviews, ESS and MSS will need to be developed. In addition, proctored practice sessions will be developed and conducted via virtual classrooms.

Training delivery for the HR/Payroll Project will take place in four streams, as detailed below. The first stream begins four months prior to go-live, and the last stream is completed in the month immediately preceding go-live. At the completion of training, the Training Team will launch and staff practice centers, which are proctored labs where end users can go to obtain assistance in executing transactions.

Training Delivery Approach	
Stream 1	<ul style="list-style-type: none"> – SAP Basic Navigation – Project Overview
Stream 2	<ul style="list-style-type: none"> – Process overview training <ul style="list-style-type: none"> ▪ Present new business processes ▪ Explain policy changes
Stream 3	– Classes with hands-on exercises for SAP transactions
Stream 4	<ul style="list-style-type: none"> – Practice: <ul style="list-style-type: none"> ▪ In scheduled, proctored virtual classroom sessions ▪ In scheduled, proctored practice center locations ▪ Self-paced, using simulations accessed through the intranet or on CDs
Post go-live	– Continued support for practice sessions

Training will be comprised of the following basic components.

Component	Stream 1	Stream 2	Stream 3	Stream 4	Post Go-Live
Concepts and key terminology	✓	✓	✓		
Instructor guides			✓		
Process flows	✓	✓	✓		
Work instructions			✓		
Demos and exercises	✓		✓	✓	✓
Job aids	✓		✓		
Simulations	✓		✓	✓	✓
Participants manuals			✓		
Assessments	✓	✓	✓	✓	✓
Web-based materials	✓	✓	✓	✓	✓

- **Concepts & Key Terminology** – Embody the high level information that sets the stage for learner understanding. Concepts & key terminology are designed to help learners understand the context of the subject: the where, why, when, and who of the work stream and roles being covered. Concepts will generally be presented in MS PowerPoint®.
- **Instructor Guides** – Aid the instructor in the delivery of the course
- **Process Flows** – Provide an explanation of the key components of the work stream.
- **Work Instructions** – Contain detailed business process specifics as well as detailed instructions for completing a new job. Work Instructions will be output from the tool RESITE Recorder.
- **Demos and Exercises** – Enable learners to apply what they have gleaned from the Concepts and Work Instructions. They must be customized to match scenarios and data appropriate to State / Agency processes.
- **Job Aids** – User help documents designed to be used at the workstation
- **Simulations** – Tool-created animations of SAP transactions. Simulations will be another output from the RESITE Recorder tool.
- **Participant Manuals** – Comprised of components used in class (Concepts, Process Flows, Work Instructions, Job Aids, and Exercises)
- **Assessments** – Test the End Users' knowledge of their work and skills. Successful completion assures competency in each individual's role and, for many organizations, is a prerequisite for system access.
- **Web-based materials** – Provides access to all training components identified above

The tables below identify the curriculum and estimated number of components that are required based on current analysis. This information may change as Instructional Designers further define and develop the curriculum.

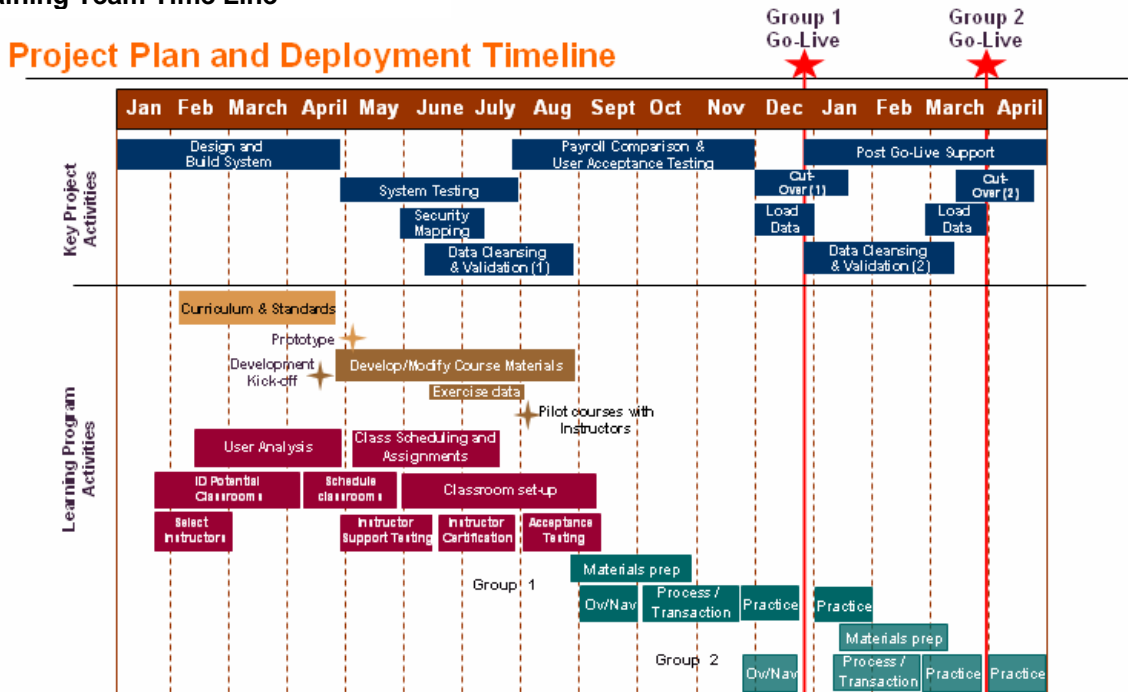
Current Planned Curriculum	
Functional Area	Course
All Core Users	– SAP Basic Navigation
Benefits	– Process Overview – Benefits Administration and Reporting
Payroll	– Process Overview – Central Payroll Processing – Central Payroll Accounting – Central Garnishment Administration – Payroll Problem Solving – Payroll Reporting
Time Administration	– Process Overview – Time Administrator Entry and Approval – Time Administration and Reporting
Personnel Administration	– Process Overview – Personnel Administration and Reporting
Organizational Management	– Process Overview – Organizational Administration and Reporting
ESS	– ESS – Payroll – ESS – Benefits
MSS	– MSS
Finance (limited to HR / Payroll functionality)	– Process Overview – General Ledger – Bank Master – Vendor Master – Funds Management – Controlling – Display Financial Information
BI	– BI Reporting – BI Support

Elements of Learning Solution	Estimated Learning Components
Participant Guides	21
Work Instructions	162
Demo / Exercises	89
Job Aids	34
Assessments	22
Instructor Guides	22
Practice / Coaching Sessions	17
Web Based Training Courses	7
Simulations	162

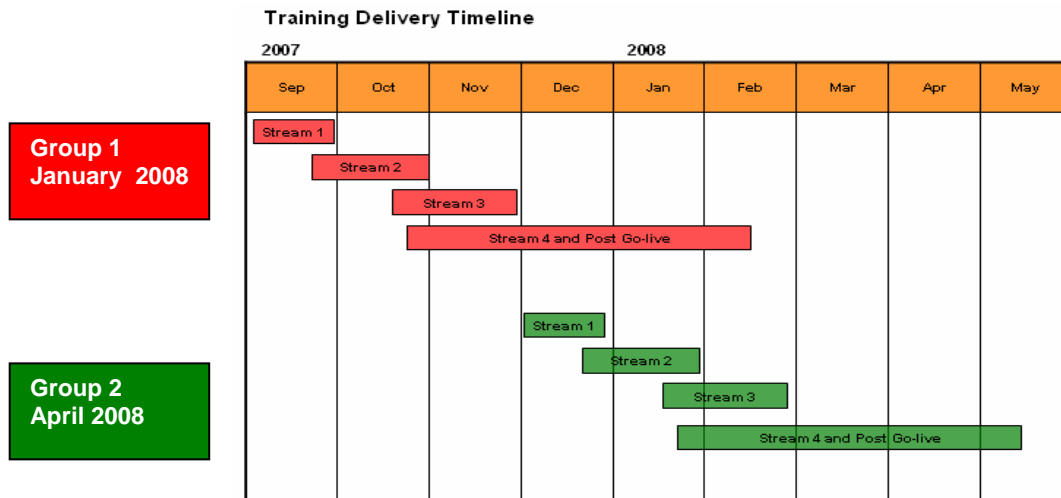
The timeline for the training effort is shown below. Key milestones are:

- Development of training materials will take place between mid April and end of August, 2007.
- In May and June, the Training Team will conduct workshops to certify state Subject Matter Experts (SME's) as instructors.
- In early August, the Training Team will conduct pilot training courses to selected SME's who will participate in User Acceptance Testing. After the pilot training, modifications to training materials will be made in preparation for end user training delivery.
- Training delivery for group 1 will be conducted from September 2007 through December 2007. Support for proctored practice sessions will continue through January 2008.
- Training delivery for group 2 will be conducted from December 2007 through March 2008. Support for proctored practice sessions will continue through April 2008.

Training Team Time Line



The chart below provides additional explanation for the timing of the training deployment.



D. Current Offerings and Training Development Strategy

While there is a centralized training effort for the legacy (PMIS) system, a training staff for all of the current payroll systems is not fully centralized. Some training facilities do exist in agency offices, but not enough for the volume of training that will be required for the BEACON HR & Payroll Project.

The State will prepare four regional training facilities across the state for the project. In addition, a staff of trainers will be developed. As much as possible, the trainers will be obtained from state agencies, bringing a depth of knowledge of current systems into the training delivery and developing agency SAP expertise. Where necessary, training developers (from the awarded vendor) must co-facilitate or conduct training.

The State of North Carolina does not currently have a web-based Learning Management System. Future plans are to implement SAP's Learning Management System module (LSO). An interim, lower-cost option is needed to support the BEACON HR & Payroll project. Vendor must include relevant information in proposal, if an internal LMS will be provided.

The State has procured RESITE Recorder and Publisher as the SAP transaction documentation tool. RESITE shall be used to record SAP transactions into XML files, which will then be used to output printed training materials, simulations, and online support documentation.

Prior to submitting proposals, vendors should review the complete Learning Program strategy, located at http://www.beacon.nc.gov/initiatives/hr_payroll/procurement.html. This information is incorporated by reference as a part of this RFP and will be very helpful in preparing Vendor's proposals.

E. Procurement Scope

The scope of this work will be to assist the State in developing and implementing end user training for the BEACON HR/Payroll Project. Work shall include conceptual and detail design as well as implementation planning, deployment, and a post-implementation assessment. **The State expects end users to be fully trained to use the system approximately 30 days prior to their respective rollout date.**

Preparation for development of training and training materials development (see table on next page) may take place on-site or remotely (in the United States). Deployment preparation, deployment of the learning program, and post-implementation support must be performed on-site at 3514 Bush Street, Raleigh, NC using State-provided PCs. After materials have been accepted by the State, subsequent work must be performed on-site.

To successfully develop and roll-out end user training, the awarded vendor must complete the following activities as part of the project scope. Additional activities, as deemed necessary, may be detailed by vendors in their proposals.

Scope Activity/Milestones	Description of Deliverables
Preparation for development of training	<ul style="list-style-type: none"> • Confirm training materials standards, identifying the type of content and level of detail to be included • Review and provide feedback on the templates and documentation standards for the suite of training material components, including: <ul style="list-style-type: none"> • Work instruction template • Training exercise template • Simulation template • Training course presentation template • Training course instructor guide template • Quick reference card template • Training course evaluation form • Training materials access point • Training materials documentation standards and naming conventions • Confirm detailed course curriculum in agreement with the Business Process Master List (BPML) and Role/Task definitions <ul style="list-style-type: none"> • Create course outlines • Confirm transactions to be included as demonstrations and exercises • Identify necessary learning components (e.g., instructor guide, work instructions, simulation) • Develop and conduct prototype courses to validate the learning approach • Establish procedures, tools, and infrastructure for tracking and managing the training materials development process • Define QA review and approval process • Participate in determining and obtaining content tools to be used in the development of web-based learning • Test development tools. • Onboard vendor training development team members, providing orientation to program processes and tools.
Training materials development	<ul style="list-style-type: none"> • Design and develop materials defined in the course curriculum. • Complete the QA review and approval process for all materials developed. • Define and create data required for training exercises in training system. • Develop materials for the trainer certification program. • Design and create materials to be used in virtual classroom practice sessions. • Develop long-term, on-going maintenance strategy of training materials.

Scope Activity/Milestones	Description of Deliverables
Deployment preparation	<ul style="list-style-type: none"> • Develop a detailed training deployment strategy. • Contribute to the selection, installation, and testing of the interim learning management system. • Test the virtual classroom tool. • Launch the learning management system. • Establish processes for using the learning management system and virtual classroom tools. • Participate in the instructor selection process <ul style="list-style-type: none"> ○ Define requirements. ○ Interview potential candidates. • Develop instructor certification strategy. • Conduct instructor certification <ul style="list-style-type: none"> ○ Develop a process and training materials for instructor certification. ○ Conduct instructor certification workshops. • Monitor and maintain SAP training environment <ul style="list-style-type: none"> ○ Coordinate with the technical team to establish the initial training environment and refresh processes. ○ Load data to support training exercises. • Conduct pilot classes. These classes will be delivered to end users who will be participating in User Acceptance Testing. The materials used will be the course materials that have been developed for end user training. • Schedule classrooms. • Validate user list. Coordinate with the Change Management, Security, and Training Agent teams to ensure that all end users have been identified and assigned appropriate roles. • Manage the creation and maintenance of the training schedule. • Test classrooms for training delivery. • Establish procedures to administer training logistics. This shall include, but is not limited to: <ul style="list-style-type: none"> ○ Allocating training clients, exercise data, and SAP student IDs to classroom sessions. ○ Class room preparation. ○ Printing of training materials using color ink.

Scope Activity/Milestones	Description of Deliverables
Deployment of the learning program	<ul style="list-style-type: none"> • Produce and store printed learning materials. • Distribute learning materials to classrooms. • Create CDs with computer-based training elements to accommodate locations where technology will not support web-based access. • Create online work instruction objects using RESITE. • Support state trainers in conducting classes and conduct classes where necessary. • Facilitate practice sessions and provide end user support in transition centers during go-live. • Participate in analyzing post-class assessments. • Staff practice centers for proctored practice sessions. • Develop an end user training readiness survey to determine go-live preparation.
Post-implementation support	<ul style="list-style-type: none"> • Continue to staff practice centers during first month of implementation. • Analyze assessments and determine needs for additional training. • Provide follow-up training as required. • Provide knowledge transfer for on-going maintenance of training materials and training exercise systems.

F. Works Produced for Hire

All work produced by the awarded Vendor in whatever format pursuant to the specifications contained in this Section I, including but not limited to basic components, learning components, courses, documentation standards, templates, forms, naming conventions, course curriculums, tools and all training and instructional materials are works for hire and shall be the property of OSC.

G. BEACON Program Organization and Governance

A Program Steering Committee (PSC) has been created to lead BEACON. The PSC sets the direction, scope and expenditures for the program and assumes accountability for project execution and results. In addition to the Steering Committee, the State has a full time Program Director. The State Program Director works for the Office of the State Controller and is the chief advisor to the Program Steering Committee. The Program Director is responsible for ensuring the performance of the awarded Vendor and the State.

The awarded Vendor shall provide necessary resources to perform its responsibilities and deliver the services for project completion in a timely manner. Vendor must provide onsite staffing during customary hours and days set by the State unless approved by the State Program Director in advance. Customary onsite project hours are Monday from 9 am to 6 pm and Tuesday through Thursday from 8 to 6 pm. Friday work hours may be completed offsite depending on work load. Onsite hours will need to be modified from time to time to best meet project needs. Onsite project staffing will be housed in the Office of the State Controller at 3514 Bush Street, Raleigh NC.

The State Chief Information Officer (State CIO) has established technical architecture and project management standards and monitoring processes for accomplishing legislatively mandated responsibilities (G.S. 147-33.72).

Vendors proposed approach must align with the State's technical architecture. Information on all state IT policy standards and technical architecture best practices can be found at www.scio.state.nc.us/

Section II. Evaluation Process

A. Evaluation Criteria

- 1) "Best Value" procurement means the selection of a vendor by determining which proposal offers the best trade-off between price and performance, where quality is considered an integral performance factor. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the vendor's proposal; the vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance. The intent of "Best Value" Information Technology procurement is to enable vendors to offer and the agency to select the most appropriate solution to meet the business objectives defined in the solicitation and to keep all parties focused on the desired outcome of procurement.
- 2) Source selection. A one-step bid process using a tradeoff/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
 - a) The evaluation methodology shall be consistent with 9 NCAC 06B.0302, or the corresponding section of any future NC Administrative Code, and this section.
 - b) The evaluation committee may engage in communications, negotiations, or request clarifications from any or all vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh, North Carolina, to discuss technical and contractual aspects of the proposal.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and request BAFOs from the vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional points to the vendors' respective scores. Points awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned points to attain final scores.
- 4) Vendors must submit a solution and cost response to this RFP.
 - a) All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
 - b) To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Responses that do not meet the full intent of all requirements listed in this RFP may be subject to point reductions during the evaluation process or may be deemed non-responsive. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

- c) Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 5) The State may at its discretion, engage Vendors in communications, seek clarifications and negotiate with Vendors in the competitive range as follows:
 - a) The State may invite Vendors in the competitive range to perform structured demonstrations of the offerings. If requested, demonstrations will be structured based on detailed questions or scenarios presented by the State in advance of demonstrations. All demonstrations will take place at 3512 Bush Street, Raleigh NC.
 - b) The State may invite Vendors in the competitive range to engage in technical discussions or other communications to address their responses.
 - c) The State may select Vendors for negotiation of all or any part of the vendor's proposal.
- 6) Each of the evaluation criteria below shall be evaluated in accordance with the solicitation documents:
 - a) Demonstration of compliance with the Proposal Specifications.
 - b) Strength of references relevant or material to technology area(s) or Specifications.
 - c) Compliance with the proposal content and organization specified in Section III of this RFP.
 - d) Responses will be scored and weighted based on the three general categories below.

Selection will be made according to best value to the State as determined by the evaluation committee. The committee will evaluate proposals and determine weighted scores using the following criteria.

Evaluation Criteria	Section of Vendor Proposal (Reference Section III)	Weighted Score
1. Proposed Approach: How the Vendor's proposed solution meets the State's needs.	Section III.2.F and G	45%
2. Vendor Experience and Qualifications. The qualifications and actual quality assurance experience of the vendor including the proposed resources. Corporate background, financial position, references and their applicability to the state's situation, past and current projects and performance history as well as the proposed organization and staffing will all be assessed.	Section III.2.E, H, and K	35%
3. Cost. The total not to exceed cost of the proposal.	Section III.2.I	20%

B. Additional Information

- 1) Vendor may be disqualified from any evaluation or award if vendor or any key personnel proposed, has previously failed to perform satisfactorily during the performance of any contract with the State or any of its agencies, or violated rules or statutes applicable to public bidding in the State.

- 2) The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue RFP	OSC	2/12/2007
Deadline for submission of questions from Vendors	Prospective Vendors	2/19/2007
Submission of Proposal	Prospective Vendors	2/28/2007
Proposal Evaluation and Selection of Finalists (optional)	Evaluation Committee	3/7/2007
Oral Presentations and/or Demonstrations by Finalists (optional)	Vendors	3/12/2007- 3/13/2007
Request Clarification/BAFO(s)	OSC	3/15/2007
BAFO Submissions	Vendors	3/22/2007
Contract Award	OSC	4/2/2007
Protest Deadline	Vendor	15 days after award

- 3) Vendor Questions: A pre-proposal conference will not be held. All vendor questions must be submitted to BEACON@ncosc.net in writing no later than 2:00 PM EST on **Monday, February 19, 2007**.
- 4) Award Of Contract. Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS §143-135.9 and applicable administrative rules. The responsible vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award. Unless otherwise specified by the State or the vendor, the State reserves the right to accept any item or group of items on a multi-item proposal.
- 5) ITS has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: <http://www.ips.state.nc.us/ips/pubmain.asp>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number 14-07-001, and then search. This information may not be available for several weeks dependant upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 6) Protest Procedures: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within 15 calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1009 - .1029.**
- 7) Demonstrations and Presentations: As indicated in the table above, selected Vendors may be required to demonstrate and present/explain their products and services. Vendors shall be prepared to defend their proposals upon request at the Office of the State Controller (OSC), 3512 Bush Street, Raleigh NC. Presentations may be video taped for further review by the evaluation team. In addition to oral interviews, the State may choose to conduct on-site interviews with one or more of vendor's references.

Section III. Proposal Content and Desired Outcomes

Proposal Content and Organization

The State seeks accurate, complete and innovative responses to this RFP. Evaluation of potential vendors will be based, in part, on how vendors demonstrate their willingness to be accountable for measurable results. In order for the State to evaluate the proposals fairly, consistently and completely, vendors must follow the format set forth below and provide all of the information requested. **Proposals that do not adhere to all of these formatting requirements may be considered non-responsive.**

- 1) Proposal Format. The proposals should be organized in the exact order listed below under number 3 of this Section. The Execution page of this RFP should be placed at the front of the Proposal. Each page should be numbered.

All proposals should be typewritten on standard 8 ½ x 11 paper and placed within a binder with tabs delineating each section. The minimum font size is 12 on 8.5 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.).

- 2) Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:
 - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
 - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 3) Proposal Organization: The proposal should be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- A. Letter of Transmittal – Each proposal should be accompanied by a letter of transmittal that provides the following information:

- Identify the submitting organization;
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- Acknowledge receipt of any and all amendments to this RFP.

- B. Table of Contents

- C. Conflict of Interest – Vendors must certify that neither they, nor any of their personnel who may provide services under any awarded contract, have a conflict of interest

- By executing this RFP the vendor agrees that no assistance was received in preparing the response from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP
- State if the vendor or any employee of the vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include (1) the position and responsibilities within the vendor's organization of such vendor employees; and (2) state the employing State Agency, individual's title at that State Agency, and termination date.

- D. Corporate Background – This section shall include information on the vendor's corporate organization (history, size, financial soundness, etc.), experience and skills regarding the vendor's track record, reputation and past performance that indicate the capabilities for the successful completion of this work. The vendor's familiarity and understanding of the State of North Carolina's processes, policies, and background should also be explained. See Section V.2 for further information on providing financial information.

E. Experience and References – A minimum of three references from similar projects in size and scope or other projects indicating the vendor’s past performance, experiences and capabilities to do this work must be provided with project description. The following information must be provided for each reference:

- Name of company or government entity
- Contact names, with titles/responsibilities, telephone numbers and email addresses
- Purposes and/or business processes for which the reference services were performed and how the services provided benefit
- Scope and approximate dollar value of engagement
- Dates of engagement
- How the use of these services and the implementation approach is relevant to the State’s situation described in this RFP
- Subcontracting is allowed for this work pursuant to Paragraphs 4 and 5 of the General Terms and Conditions for Goods and Services, but its use must be explained and the responding vendor must be responsible and accountable for all work performed by subcontractor. If subcontractors are proposed, indicate primary and subcontractor experience and references.

MINIMUM QUALIFICATIONS: The following minimum qualifications are required of Vendor proposals. Vendor proposals that do not meet the minimum requirements will not be considered:

- The Vendor, and any subcontractor proposed, must be financially sound
- The Vendor must demonstrate in their proposal that they have experience developing and delivering an SAP HR/Payroll learning program in the public sector or in a geographically-diverse organization
- The Vendor’s proposal must be submitted within the required timelines

F. Executive Summary – This section shall describe the vendor’s understanding of the State’s current situation and how the overall proposed services meet the needs of the State’s project.

G. Project Approach – Vendors shall use this section to particularly describe the approaches, governance, processes and procedures that will be used for planning, managing and implementing the project. Proposals shall include, at a minimum, the scope activities listed in Section I. E above.

Vendor must provide a high level work plan including a sequencing of major business and technical phases and activities. The table below shall be completed and included as part of the vendor’s proposed solution. The table must be completed with the milestone/deliverable, proposed date delivered, and the person-days involved in the work for completing the project in its major phases or parts.

Milestone/Deliverable Name	Detailed description of Milestone/Deliverable	Proposed Date Delivered	Person-days
Total Person - Days			

H. Project Organization and Staffing – This section shall include a description of the proposed staffing, responsibilities/accountability assignments and organizational structure for accomplishing this project. At a minimum the following three sections must be included:

1. Vendor must provide a diagram of the proposed project staffing structure and reporting/governance structure. The diagram must show the key vendor, subcontractor (if applicable), and State staffing.

2. All proposed key project personnel, including subcontractor staff, must be identified in the proposal. The State reserves the right to approve or disapprove any change in the successful vendor's project team members whose participation is specifically offered in the proposal. This is to ensure that persons with vital experience and skill are not arbitrarily removed from the project by the vendor. In addition to the information required in the chart below, vendor must include one page resumes/biographies of each proposed project person in the appendix. List the following for all vendor employees and subcontractors that may be assigned to the project. Vendor must distinguish employees from subcontractors.

Name	# Years with Vendor	Company/Position Title	Proposed Project Role and Approximate FTE Timeframe	# Yrs of Relevant Experience and Summary of Skills/Experience applicable to Assigned Project Role

3. Vendor must also list the following resource information needed from the State to complete the project:

State Project Role/Assignment	# FTE	Length of Assignment/ Approximate Timeframe	Skills/Experience Required

4. Subcontracting is allowed for this work pursuant to Paragraphs 4 and 5 of the General Terms and Conditions for Goods and Services, but its use must be explained and the responding vendor must be responsible and accountable for all work performed by subcontractors. If subcontractors are proposed, indicate primary and subcontractor staffing and responsibilities and include the same information and chart for subcontractors as is required in Subsection H. 2 above.

- I. **Cost** – The State of North Carolina's fundamental commitment is to contract for results. This RFP describes what is required and places the responsibility for how it is accomplished on the vendor. Vendors should consider and identify cost saving and cost-avoidance methods and measures when developing their proposals.

The resulting contract from this RFP will be performance-based, with payments triggered by State acceptance of milestones/deliverables that are determined by the State to be satisfactory. Travel and expense cost shall be included as part of the overall not to exceed bid amount and will not be paid separately by the State.

A 15% retainage will be withheld on each milestone/deliverable payment for final payment at successful completion of the project as determined by the State. The retainage amount may be reduced during the project based upon the vendor's performance. The two major cost types are explained in the table below:

Cost Type	Invoice	Payments
A successful achievement of milestones/deliverables as determined by the State.	When Achieved/Delivered	When Accepted by the State with 15% Retainage
Retainage of 15% of total cost	Invoiced at Project Completion	Upon satisfactory completion as accepted by the State

The following two charts shall be included for the Cost section of the proposal:

Cost Type	Cost
Total Not to Exceed Project Cost	
Hourly Rate	

Implementation Milestones/Deliverables and Cost

Milestone/Deliverable	Cost of Milestone/Deliverable	Proposed Date Delivered
Total Costs		

- J. Vendor Response to Other Requirements, including requirements in Section V;
- K. Appendix – This section must include financial information as requested in Section V #2 on page 24 and the proposed personnel resumes as requested in section H above.

Section IV. Bidding Information

A. Instructions to Vendors

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) Proposals submitted electronically, or via facsimile (FAX) machine will not be accepted.
- 2) EXECUTION: Failure to sign under EXECUTION section will render proposal invalid.
- 3) TIME FOR CONSIDERATION: Unless otherwise indicated on the first page of this document, vendor's offer must be valid for 90 days from the date of proposal opening
- 4) FAILURE TO MEET PROPOSAL REQUIREMENTS: While it is not anticipated that the awarded vendor will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next vendor response that represents the best interest of the State.
- 5) PROMPT PAYMENT DISCOUNTS: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 6) MISCELLANEOUS: Masculine pronouns shall be read to include feminine pronouns, and the singular of any word or phrase shall be read to include the plural and vice versa.
- 7) VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM: Vendor Link NC allows vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System. Online registration and other purchasing information are available through our Internet web site: <http://www.its.state.nc.us/ITProcurement/>
- 8) ORGANIZATION: Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 9) E-PROCUREMENT: **This is not an e-procurement solicitation.** Paragraphs #46 and 47 of the attached Information Technology Procurement Office General Terms and Conditions for Goods and Related Services do not apply. General information on the e-procurement service can be found at: http://www.ncgov.com/eprocurement/asp/section/ep_index.asp

B. General Conditions for Proposals

1) Definitions, Acronyms and Abbreviations. Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:

- a) **The State**: Is the State of North Carolina, and its Agencies.

- b) **ITS:** Office of Information Technology Services.
 - c) **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of “goods” in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
 - d) **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation
 - e) **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
 - f) **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
 - g) **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
 - h) **RFP:** Request for Proposal
- 2) **Read and Review.** It shall be the vendor’s responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State’s intent as specified herein. If a vendor discovers an inconsistency, error or omission in this solicitation, the vendor should request a clarification from the State’s contact person listed on the front page of the solicitation.
 - 3) **Vendor Responsibility.** The vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs therefor. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
 - 4) **Oral Explanations.** The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said vendor’s offer. Inappropriate Agency contact regarding this RFP with any vendor may be grounds for cancellation of this RFP.
 - 5) **Insufficiency of References to Other Data.** Only information that is received in response to this RFP will be evaluated. Reference to information previously submitted will not suffice as a response to this solicitation.
 - 6) **Conflict of Interest.** Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, 133-32. The vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
 - 7) **Contract Term.** A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be fifteen (15) months from the effective date, with the option to extend up to (2) additional (3) month periods, unless terminated earlier.
 - 8) **Effective Date.** This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing vendor for goods provided nor services rendered prior to the appropriate signatures and the arrival of

the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.

- 9) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 10) Historically Underutilized Businesses. Pursuant to General Statute 143-48 and Executive Order #150, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://www.doa.state.nc.us/doa/hub/>
- 11) Clarifications/Interpretations. Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 12) Rights Reserved. While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
 - a) waive any formality;
 - b) amend the solicitation;
 - c) cancel or terminate this RFP;
 - d) reject any or all proposals received in response to this document;
 - e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
 - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more vendors;
 - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
 - h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more vendors.
- 13) Alternate Bids. In addition to its response to this RFP, the vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the RFP requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown below. Each proposal must be for a specific set of services or products and bid at specific pricing. If a vendor chooses to respond with various service or product offerings, each must be bid with a different price and a separate proposal response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

Alternate bids must be clearly marked
“Alternate bid for ‘name of Vendor’”

and numbered sequentially with the first bid if separate proposals are submitted.

This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

- 14) Co-Vendors. Vendors may submit offers as partnerships or other business entities. Such partners or other “co-vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-vendors.
- 15) Submitting a Proposal. Each vendor submitting a proposal warrants and represents that:
- a) The proposal is based upon an understanding of the specifications and requirements described in this RFP.
 - b) Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the vendor. The State is not liable for any expense incurred by the vendors in the preparation and presentation of their proposals.
- 16) All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and vendor resulting from this RFP process.
- 17) A proposal may not be unilaterally modified by the vendor for a 90-day period following the delivery of the proposal, or of any best and final offer.

Section V. Other Requirements and Special Terms

- 1) VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.: In accordance with Executive Order #60, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor’s proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:
- a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
 - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
 - c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract outside of the United States
 - d) Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided
- 2) Financial Statements and Information: The Vendor, its partners and all subcontractors, **shall** provide evidence of financial stability with its response to this RFP as further described herein below.

Provide a Comprehensive Report from Dun and Bradstreet, stating the financial condition and credit rating of the company.

Note: The State may, in its sole discretion, accept evidence of financial stability other than the Comprehensive Report for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award.

- 3) Disclosure of Litigation. The Vendor's failure to fully and timely comply with the terms of this section, including providing reasonable assurances satisfactory to the State may constitute a material breach of this Contract.
 - a) Vendor shall notify the State in its bid proposal, and promptly thereafter as otherwise applicable, of any civil litigation, arbitration, proceeding, or judgments against it, its partners – if any—in its response to this RFP or its subcontractors during the three (3) years preceding its bid proposal, or which may occur during the term of any awarded to Vendor pursuant to this solicitation, that involve (1) services or related goods that involve a claim that may affect the viability or financial stability of the Vendor, or (2) a claim or written allegation of fraud by the Vendor or any subcontractor hereunder, arising out of their business activities, or (3) a claim or written allegation that the Vendor or any subcontractor hereunder violated any federal, state or local statute, regulation or ordinance, or (4) any claim or written allegation that involves projects similar to the one that is subject of this RFP. Multiple lawsuits and or judgments against the Vendor or subcontractor shall be disclosed to the State to the extent they affect the financial solvency and integrity of the Vendor or subcontractor.
 - b) All notices shall be provided in writing to the State within thirty (30) calendar days after the Vendor learns about any such criminal or civil matters; unless such matters are governed by the ITS General Terms and Conditions annexed to the solicitation. Details of settlements which are prevented from disclosure by the terms of the settlement shall be annotated as such. Vendor may rely on good faith certifications of its subcontractors addressing the foregoing, which certifications shall be available for inspection at the option of the State.
- 4) Security and Background Checks – The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements. This approval requirement shall not relieve Vendor of its obligations to perform all work in compliance with the Contract terms. The Agency reserves the right to reject and/or bar any Vendor personnel, whether employee or agent, from the Agency facilities for cause. Facilities, as used herein, shall comprise physical, internet-based resources or interfaces, intranet resources, or informational resources. Vendor shall cover the expenses for the Office of the State Controller to conduct a criminal background check of all employee.
- 5) Assurances - In the event that criminal or civil investigation, litigation, arbitration or other proceedings disclosed to the State pursuant to this Section, or of which the State otherwise becomes aware, during the term of this Contract, causes the State to be reasonably concerned about:
 - a) the ability of the Vendor or its subcontractor to continue to perform this Contract in accordance with its terms and conditions, or
 - b) whether the Vendor or its subcontractor in performing services is engaged in conduct which is similar in nature to conduct alleged in such investigation, litigation, arbitration or other proceedings, which conduct would constitute a breach of this Contract or violation of law, regulation or public policy,
 - c) then the Vendor shall be required to provide the State all reasonable assurances requested by the State to demonstrate that: the Vendor or its subcontractors hereunder will be able to continue to perform this Contract in accordance with its terms and conditions, and the Vendor or its subcontractors will not engage in conduct in performing services under this Contract which is similar in nature to the conduct alleged in any such litigation, arbitration or other proceedings.

- 6) Confidentiality Of Data and Information - All financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State, or by SAP or other third party and provided to the State, and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Vendor. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section.
- a) The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity and sufficient time, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- 7) Stop Work Order - The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to 90 days after the Stop Work Order is delivered to the Vendor. The 90-day period may be extended for any further period for which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of 90 days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall:
- a) Cancel the Stop Work Order, or
- b) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- c) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
- ii) The Vendor asserts its right to an equitable adjustment within 30 days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under his Contract.
- d) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement. The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.
- 8) Transition Assistance – At the end of the contract term, or if the contract is canceled prior to its expiration, for any reason, the Vendor must provide transition assistance for up to a six (6) month extension period. This includes all reasonable transition assistance requested by the State, to allow for the expired or canceled portion of the Services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. Such transition assistance will be deemed by the parties to be governed by the terms and conditions of this Contract, (notwithstanding this expiration or cancellation) except for those Contract terms or conditions that do not

reasonably apply to such transition assistance. The State shall pay the Vendor for any resources utilized in performing such transition assistance at the most current rates provided by the Contract for Contract performance. If the State cancels this Contract for cause, then the State will be entitled to off set the cost of paying the Vendor for the additional resources the Vendor utilized in providing transition assistance with any damages the State may have otherwise accrued as a result of said cancellation.

- 9) **Equipment policy:** It is the intent of OSC to provide desktop workstations to contractors on the Training Services Contract. Vendors must use the workstation only for work on this contract and must abide by all security and other IT policies of State government in the use of the PC. The Microsoft Office Professional suite and other software as deemed necessary will also be provided. This is the equipment contractors must use when working on-site. This equipment shall only be used in completing activities associated with this contract.
- 10) **Acceptance of the Vendor's materials and deployment:** Acceptance criteria will be mutually determined by the awarded vendor and the State during the planning process of each milestone phase.
- 11) **Upon award,** the vendor shall propose a format for project documents and gain the State's approval prior to preparation of the first deliverable. The Vendor should meet with the State Program Manager to review an outline of, and criteria for, each project deliverable in advance of its preparation. The Vendor shall provide a draft table of contents as part of the outline. The State will be responsible for reviewing and approving each deliverable. Each deliverable will require a negotiated State turn-around time to be included in the Project Schedule.

Section VI. State's General Terms and Conditions for Goods and Related Services

Definitions: As used herein;

State shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

1) Standards: Manufactured items and/or fabricated assemblies comprising Deliverables shall meet all requirements of the Occupational Safety and Health Act (OSHA), and State and federal requirements relating to clean air and water pollution, if applicable. Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All manufactured items and/or fabricated assemblies comprising Deliverables are subject to operation, certification or inspection, and accessibility requirements as required:

- by State or federal Regulation,
 - by the Chief Information Officer's (CIO) policy or regulation, or
 - acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
- a) **Reserved.**
 - b) **Reserved.**
 - c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, vendor shall supply proof of compliance with the specifications. Vendor must provide written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

2) Warranties: Vendor shall assign all applicable third party warranties for Deliverables to the Purchasing State Agency.

3) Personnel: Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's

Contract Administrator accompanied by the names and references of vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

4) Subcontracting: The vendor may subcontract the performance of required services with other vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between vendor and all subcontractors. The selected vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected vendor. Any contracts made by the vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

5) Vendor's Representation: Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime vendor under this Contract. Should the State approve any subcontractor(s), the vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party vendors or subcontractors of vendor may appear for purposes of convenience in Contract documents; and shall not limit vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

6) Reserved.

7) Reserved.

8) Reserved.

9) Governmental Restrictions: In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate vendor for sums due under the Contract.

10) Prohibition Against Contingent Fees and Gratuities: Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the vendor(s) or vendor(s) as permitted by 9 NCAC 06B.1009(f), 06B.1030, or other provision of law.

11) Availability of Funds: Any and all payments to vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years subsequent to that in

which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to vendor. If the Contract is terminated under this paragraph, vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

12) Payment Terms: Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later; unless a period of more than 30 days is required by the Agency. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et. seq. of the N.C. General Statutes and applicable Administrative Rules. Upon vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the vendor's payment check(s) directly to any person or entity designated by the vendor, or
- b) Include any person or entity designated in writing by vendor as a joint payee on the vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the vendor and the vendor shall remain responsible for fulfillment of all Contract obligations.

13) Acceptance Criteria: In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify vendor, in writing ten calendar days following completion of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different vendor, and to invoice the original vendor for any differential in price over the original Contract price. When Deliverables are rejected, the vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by vendor as provided herein.

14) Equal Employment Opportunity: Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

15) Reserved.

16) Advertising/Press Release: The vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

17) Confidentiality: In accordance with 9 NCAC 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et. seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors, that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. ***However, under no circumstances shall price information be designated as confidential.*** The State may serve as custodian of vendor's confidential

information and not as an arbiter of claims against vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s) or public employee(s). The vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the vendor in writing of any action seeking to compel the disclosure of vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to vendor with respect to the disclosure of vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

a) **Care of Information:** Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.

b) Vendor warrants that all its employees and any approved third party vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.

c) **Nondisclosure:** Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State .

18) Deliverables: Deliverables, as used herein, shall comprise all project materials, including goods, software, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina and must be kept confidential or returned to the Agency, to ITS procurement, or destroyed as required by the State. Proprietary vendor materials licensed to the State shall be identified to the State by vendor prior to use or provision of services hereunder and shall remain the property of the vendor. Embedded software or firmware shall not be a severable Deliverable. The State's solicitation document may supplement or substitute this definition and the requirements set forth in this Paragraph. Deliverables include "Work Product" and means any expression of Licensor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not source and object code or software. All Software source and object code is the property of Licensor and is licensed nonexclusively to the State, at no additional license fee, pursuant to the terms of the software license contained herein, and in the Supplemental Terms and Conditions for Software and Services or the License Agreement if incorporated in the Solicitation Documents.

19) Late Delivery, Back Order: Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, vendor shall state the projected delivery time and date. In the event the delay projected by vendor is unsatisfactory, the Agency shall so advise vendor and may proceed to procure substitute Deliverables or services.

20) Patent, Copyright, and Trade Secret Protection:

a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the vendor hereby grants the State

a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

b) Written material produced by the Vendor shall be works for hire. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to vendor. The State hereby grants vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license only for vendor's internal use to non-confidential Deliverables first originated and prepared by the vendor for delivery to the State.

c) The vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the vendor, or the operation of such Deliverables pursuant to a current version of vendor-supplied software, infringes a United States patent, or copyright or violates a trade secret. The vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:

- i) That the vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
- ii) That the vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that the State shall have the option to participate in such action at its own expense.

d) Should any services or software supplied by vendor, or the operation thereof become, or in the vendor's opinion are likely to become, the subject of a claim of infringement of a United States patent, copyright, or a trade secret, the State shall permit the vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The vendor agrees to take back such Deliverables and refund any sums the State has paid vendor less any reasonable amount for use or damage.

e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.

f) Nothing stated herein, however, shall affect vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

21) Access to Persons and Records: Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

22) Assignment: Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that vendor shall affirm that the assignee is fully capable of performing all obligations of vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

23) Insurance Coverage: During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract ; and
- b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and
- c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and
- d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

24) Dispute Resolution: The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

25) Default: In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1030. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1031 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

- a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.
- b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.
- c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

26) Waiver of Default: Waiver by either party of any default or breach by the other Party shall not be deemed a waiver or any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in a writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 30)b) hereinbelow.

27) Termination: Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
 - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
 - ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving 30 days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

28) Limitation of Vendor's Liability:

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract. Provided, however, that the State's Solicitation Documents or the Supplemental Terms and Conditions for Software or Services, if any, may increase Vendor's maximum liability for damages, but in no event shall the liability for damages be less than the total value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

29) Vendor's Liability for Injury to Persons or Damage to Property:

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the

ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.

c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

30) General Indemnity: The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and

b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

31) Changes: This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

32) Reserved.

33) Time is of the Essence. Time is of the essence in the performance of this Contract.

34) Date and Time Warranty: The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

35) Independent Contractors: Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

36) Reserved.

37) Notices: Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

38) Titles and Headings: Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

39) Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

40) Taxes: The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

41) Governing Laws, Jurisdiction, and Venue:

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

b) Except to the extent the provisions of the Contract are clearly inconsistent therewith, the applicable provisions of the Uniform Commercial Code as modified and adopted in North Carolina shall govern this Contract. To the extent the Contract entails both the supply of "goods" and "services," such shall be deemed "goods" within the meaning of the Uniform Commercial Code, except when deeming such services as "goods" would result in a clearly unreasonable interpretation.

42) Force Majeure: Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

43) Compliance with Laws: The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

44) Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

45) Federal Intellectual Property Bankruptcy Protection Act: The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

46) Reserved.

47) Reserved.